UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

International Brotherhood of Electrical Workers, Local 538,	)	
Union/Charging Party,	)	
	)	Case Numbers 25-CA-249830
	)	25-CA-251056
and	)	25-CA-251084
	)	25-CA-252037
	)	25-CA-253355
Full Fill Industries LLC,	)	25-CA-256552
Employer/Respondent.	)	

EMPLOYER'S MOTION FOR BILL OF PARTICULARS

Now comes Full Fill Industries LLC ("Full Fill" or "Respondent"), the named Employer in the above-referenced matters, by and through its Attorney, David B. Wesner, of Evans, Froehlich, Beth and Chamley, and for its Motion for Bill of Particulars seeking an Order compelling the Regional Director and/or the General Counsel to provide Respondent with a Bill of Particulars in connection with the Consolidated Complaint (Exhibit A) specifying with particularity the factual and legal basis upon which they rely in advancing those claims and which would allow Respondent to prepare its defense, states as follows:

I. Background

On August 26, 2020, an Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing was entered. Respondent filed a Motion to Dismiss, which included a request

for alternate relief. The Motion to Dismiss was denied, and included the indication that the requested alternate relief was not properly before the Board.

II. Argument

Virtually all of the allegations of unfair labor practices contained in the Consolidated Complaint fail to set forth sufficient detail to put Respondent on notice of the claims against it and as such deny Respondent a meaningful opportunity to respond to such claims and prepare its defense. The Consolidated Complaint contains only vague, conclusory allegations. The bare-bones allegations are insufficient to meet the Board's Rules and Regulations and precedent concerning the requirements for a complaint. In order for Respondent to have a full and fair opportunity to defend itself against the allegations, the Regional Director and/or General Counsel must first specify with particularity the underlying factual basis as to each and every allegation. If the relief requested by this Motion is not granted, Respondent will be irreparably prejudiced, denied its fundamental right to procedural due process and may, by necessity, be compelled to request a continuance of the hearing after it hears the General Counsel's and Union's evidence and learns for the first time the facts underlying the allegations.

A. Board Rules and Regulations and Precedent as well as Court Precedent Mandate Granting this Motion

Section 101.8 of the Board's Rules and Regulations, Series 8, as amended, 29 C.F.R. §101.8 states, in pertinent part, that a Complaint issued by a Regional Director must set forth "the facts relating to the alleged violations of law by the respondent." (emphasis added) Such section clearly requires facts and not mere conclusory statements. Section 102.15(b) of the Board's Rules and Regulations, Series 8, as amended, 29 C.F.R. §102.15(b), further states that the complaint "will contain": "A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." (emphasis added) While the language of Section 102.15(b) makes specific mention of certain facts that must be included, those items are not an exhaustive list nor the sole items that make a complaint sufficient under the Board's Rules and Regulations. The pertinent language is:

"description of the acts which are claimed to constitute unfair labor practices." The consolidated complaint filed herein is woefully deficient in that respect.

"It is axiomatic that a respondent cannot fully and fairly litigate a matter unless it knows what the accusation is." M & M Backhoe Service Inc., 345 NLRB 462, 462 (2005). The Board has held: " a bill of particulars is justified .. when the complaint is so vague that the party charged is unable to meet the General Counsel's case." Affinity Medical Center, 364 NLRB No. 67, slip op. at 2 (2016), quoting North American Rockwell Corp. v. NLRB, 389 F.2d 866, 871 (10th Cir. 1968).

To satisfy due process, the General Counsel is obligated "to clearly define the issues and advise an employer charged with a violation ... of the specific complaint he must meet ... [and the failure to do so] is ... to deny procedural due process of law." Soule Glass Co. v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981). *See also* SFTC, LLC d/b/a Santa Fe Tortilla Company, 360 NLRB. No. 130 at 2 n. 9 & 10 n.6 (June 13, 2014) (affirming ALJ decision to dismiss allegations on due process grounds, in which ALJ explained, "[Respondent] is entitled to due process. That is, it is entitled to know ahead of time what alleged violations it must defend. It is, after all, a simple matter to prepare or amend a complaint that does so.") The Administrative Procedure Act, the Board's Rules and Regulations, and the Board's Casehandling Manual demand that the Complaint notify the Respondent of the facts and law at issue so that the Respondent has a full and fair opportunity to prepare a defense. *See* Administrative Procedure Act, 5 U.S.C. §554(b)(3) ("Persons entitled to notice of an agency hearing shall be timely informed of ... the matters of fact and law asserted")(emphasis added); NLRB Rules and Regulations, Rule 102.15 ("The complaint shall contain ... a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed"); NLRB Casehandling Manual §10268.1 (The Complaint "sets forth ... the facts relating to the alleged violations by the respondent(s)")(emphasis added); NLRB Casehandling Manual §10264.2 (The allegations of a complaint must be "sufficiently detailed to enable the parties to understand the offenses charged and the issues to be met)(emphasis added).

In Montgomery Ward and Co., 187 NLRB 956, 964 n.9 (1971), the Board found that the complaint, which alleged that supervisors "verbally abused employees known as union supporters", was insufficient to place in issue the question of whether the alleged verbal abuse

violated the Act. Id. at 964 n.9. Clearly, the Board recognized that mere conclusory statements were insufficient to place a particular circumstance at issue. In Storkline Corp., 141 NLRB 899 (1963), the company filed a motion for bill of particulars seeking specificity with regard to allegations in the complaint. One example of the allegations in the complaint was a general allegation of "threats". The Board granted the company's motion, which included requiring specificity with respect to the alleged threats.

Longstanding United States Supreme Court precedent dictates that an unfair labor practice complaint must adequately put the charged party on notice of the violations it allegedly committed. The Supreme Court in NLRB v. Mackay Radio and Telegraph Co, 304 U.S. 333 (1938) held that: "the Respondent [is] entitled to know the basis of the complaint against it, and to explain its conduct, in an effort to meet the complaint[.]" Id. at 350. The primary function of notice is to afford respondent the ability to prepare a defense by investigating the factual basis for the allegations in a complaint in order to refute those allegations. See Soule Glass and Glazing Co. v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981), rev'd on other grounds; NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 108 L.Ed. 2d 801, 110 S. Ct. 1542 (1990).

As found in Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, 72 (3d Cir. 1965), the "propriety of a pleading is judged by its effectiveness as a mechanism for giving an adverse party notice of the claim upon which relief is sought." The Consolidated Complaint herein is couched in terms so vague and non-specific as to render impossible any meaningful defense by Respondent.

B. The Allegations contained in the Consolidated Complaint Lack Sufficient Specificity

As set forth in greater detail below, allegations in the Consolidated Complaint lack the requisite specificity to permit Respondent to understand the nature of the allegations or how they form the basis for a violation in order to prepare its defense. Therefore, the Bill of Particulars must be provided in response to this Motion.

1. The Consolidated Complaint Lacks Any Allegations Concerning Three Named Individuals

Complaint Paragraph 4 alleges that Dave Clapp, Steve Clapp, and William Lowe "have been

supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act". However, nowhere in the Consolidated Complaint are there any allegations of any conduct, unlawful or otherwise, attributed to these individuals.

By naming Dave Clapp, Steve Clapp, and William Lowe in the Consolidated Complaint, the Region necessarily implied that they were either involved in, or witness to, some alleged unlawful conduct or activity. However, by failing to identify any such alleged activity with respect to these individuals, Respondent is left to guess as to what involvement these individuals may have had, if any. This clear lack of specificity precludes Respondent from gathering information and evidence necessary to meet the Region's allegations concerning these individuals.

2. The Consolidated Complaint allegations concerning "surveillance" fails to allege facts sufficient to state any actionable claim.

Paragraphs 5(a) and 5(b) concern allegations of "surveillance". Paragraph 5(a) contains two sub-paragraphs. The two sub-paragraphs contain almost identical statements concerning alleged "surveillance". Sub-paragraph (i) is a conclusory statement with no factual allegations concerning the alleged conduct. The statement fails to identify the specific location of the alleged "surveillance". Respondent's facility is over 175,000 square feet. Without providing the specificity of the location of the alleged "surveillance", Respondent is not able to investigate the alleged conduct to determine what witnesses may have been present and determine what conduct may have taken place. The statement in sub-paragraph (i) fails to provide specificity with regard to the "how" or "what" of any conduct that could be suggested to be "surveillance". As such, the conclusory statement in Sub-paragraph (i) fails to allege with specificity the nature of the conduct alleged to be a violation. Additionally, sub-paragraph (i) fails to provide any specificity as to which employees were involved and what "union activities" they may have been engaged in to identify how the alleged conduct would be a violation of the Act. The Region relies on conclusory statements in its attempt to suggest that the alleged conduct rose to the level of being unlawful or to otherwise be considered a violation. Such reliance cannot support a claim of a violation without the specificity of actual facts surrounding the conduct. Without specificity,

sub-paragraph (i) provides Respondent with no real notice of the nature of the conduct and the specific nature of the allegations in order for it to prepare its defense.

Sub-paragraph (ii) provides only slightly more information than sub-paragraph (i) but is still merely a conclusory statement. Therefore, all of the issues described above pertaining to sub-paragraph (i) also pertain to sub-paragraph (ii). Additionally, the statement fails to provide any specificity as to how the alleged conduct regarding a phone relates to the conclusory statement of "creating an impression" of "surveillance". Further, since the Consolidated Complaint fails to provide any of the requisite specificity, Respondent cannot tell whether the allegations involve a single incident or two separate incidents. The Region again relies on conclusory statements that the alleged conduct rose to the level of being unlawful or to otherwise be considered a violation. Such reliance cannot support a claim of a violation without the specificity of actual facts surrounding the alleged conduct.

As noted by the Board, not all conduct that could be considered "surveillance" may be deemed unlawful or otherwise a violation. *Hoyt Water Heater Co.*, 282 NLRB 1348 (1987). *Durham School Services*, 361 NLRB 1197 (1993). *Aladdin Gaming LLC*, 345 NLRB 585 (2005). United Food and Commercial Workers Union Local 204 v. National Labor Relations Board, 506 F.3d 1078 (DC Cir. 2007). *Holy Cross Health d/b/a Holy Cross Hospital*, 370 NLRB 16 (2020). In this regard, the allegations in Paragraph 5(a) are woefully deficient on providing the required specificity to put the claim at issue or provide Respondent proper notice with which it may investigate the claim and present its defense.

Paragraph 5(b) contains allegations involving a different individual allegedly making statements to employees. The same issues noted above with respect to Paragraph 5(a) pertain to this paragraph as well. Additionally, this paragraph fails to provide specificity as to the statements made to suggest that they rise to the level of "surveillance" or even create an "impression" of surveillance. Further, this paragraph fails to provide specificity as to which, if any, employees were the ones to which the statements were made. Without such specificity, Respondent is denied the ability to investigate such claim and to prepare its defense.

In United Biscuit Co., 101 NLRB 1552 (1952), the Board ordered a bill of particulars which required specificity as to the substance of intimidatory and coercive statements attributed to the Respondent. Id. at 1554. In Montgomery Ward and Co., 187 NLRB 956 (1971), the Board found that a complaint alleging supervisors "verbally abused employees known as union

supporters" was not sufficient to place in issue whether the alleged conduct violated the Act. Paragraphs 5(a) and 5(b) fall into this category such that the Consolidated Complaint as to those claims cannot be sustained.

Clear Board precedent holds that a complaint with mere conclusions without facts and specificity concerning statements attributed to specific individuals are not sufficient to sustain a claim. The Board recognized that a complaint with merely conclusory statements or legal assertions was not sufficient to provide notice and due process to a Respondent. Paragraphs 5(a) and 5(b) of the consolidated complaint fall into the same category such that the Region and/or General Counsel should be required to submit a bill of particulars to provide the required notice and allow Respondent to investigate the claims and prepare its defense.

3. The Consolidated Complaint allegation concerning "destroy[ing] union literature" fails to allege facts sufficient to state any actionable claim.

Paragraph 5(c) merely sets forth a conclusory statement. Paragraph 5(c) fails to identify the location of the alleged conduct. Without such specificity, Respondent is not able to investigate the alleged conduct and determine what witnesses, if any, were present that could provide information on the alleged conduct. Paragraph 5(c) fails to specifically identify the "literature" to reflect whether it is, in fact, associated with the union as claimed. Paragraph 5(c) fails to identify the employees that were present to witness the alleged conduct. Without such specificity, Respondent is not able to investigate such claim to determine what conduct, if any, occurred and what witnesses may afford information concerning the alleged conduct in order to present its defense. Without any specificity, the Respondent will likely require a continuance of the hearing in order to prepare its defense once it hears for the first time the facts underlying such claim.

4. The Consolidated Complaint allegation concerning "threaten[ing] to search employee lockers" fails to allege facts sufficient to state any actionable claim.

Paragraph 5(d) alleges that "threats" were made to employees. Paragraph 5(d) fails to provide any specificity concerning the location where the alleged threats were made. Without such specificity, Respondent is not able to investigate such allegation to determine what, if any,

conduct occurred and what witnesses may be available to provide information regarding such claim. Paragraph 5(d) fails to specify to whom the threats were made. Without such specificity, Respondent is not able to investigate the alleged conduct in order to present a defense. Paragraph (d) fails to provide any specificity with regard to the alleged conduct that suggests it rises to the level of being unlawful or to otherwise be a violation. Without specific facts alleging what the named individuals said and to whom, the General Counsel cannot prevail on its claim. This paragraph contains no such facts and, therefore, utterly fails to meet the basic standards of notice pleading. In Montgomery Ward and Co., 187 NLRB 956 (1971), the NLRB found that a complaint alleging supervisors "verbally abused employees known as union supporters" was not sufficient to place in issue whether the alleged conduct violated the Act. Id. at 9654 n. 9. See also United Biscuit Co., 101 NLRB 1552 (1952) (bill of particulars ordered as to substance of alleged statements attributed to Respondent). Similar to Montgomery Ward and United Biscuit, Paragraph 5(d) merely provides a conclusory statement without specific facts concerning the alleged statements and how, or if, they rise to the level of being unlawful or to otherwise be a violation. The conclusory allegation fails to give Respondent any information concerning the basis for the claim in clear contravention of the Board's Rules and Regulations and Casehandling Manual.

Additionally, Paragraph 5(d) fails to allege that the unidentified statements had any coercive effect. The Consolidated Complaint fails to address Respondent's policies concerning searches. In order to put the conduct at issue and pursue its claim, the General Counsel necessarily needs to address how the alleged conduct is unlawful in the face of Respondent's policies, rules and handbook provisions. Both common law and Board precedent provide that employer's searches of company provided areas and employee's property while on company grounds are not per se unlawful. In its recent decision in Verizon Wireless, the Board held that employers have the right to conduct searches, including searches of employees' property while on company premises. Verizon Wireless, 369 NLRB No. 108 (2020). In Verizon Wireless, the Board cited its decision in Boeing Co. with regard to the proper analysis of company policies to determine if any conduct pertaining to those policies was unlawful or otherwise a violation. Boeing Co., 365 NLRB No. 154 (2017). In Boeing Co., the Board held that it would no longer find unlawful the mere maintenance of policies, work rules or handbook provisions that were facially neutral where the legality turns on whether an employee would reasonably construe a

policy, rule or handbook provision to prohibit some type of potential Section 7 activity that might or might not occur. The Board established a new standard that analyzes the nature and extent of the potential impact on Section 7 rights and the legitimate justifications associated with the policy, rule or handbook provision. The evaluation must be consistent with the Board's duty to strike the proper balance. The Board defined three categories of policies, rules and handbook provisions. Category 1 includes policies, rules or handbook provisions that are designated as lawful to maintain because, when reasonably interpreted, they do not prohibit or interfere with the exercise of Section 7 rights or the potential adverse impact is outweighed by justifications. Category 2 includes policies, rules or handbook provisions that warrant individualized scrutiny on their potential interference and adverse impact. Category 3 includes policies, rules or handbook provisions that will be designated as unlawful to maintain because they would prohibit or limit protected conduct and the adverse impact on Section 7 rights is not outweighed by justifications associated with the policies, rules or handbook provisions. As the Consolidated Complaint fails to address the Respondent's policies, rules and handbook provisions concerning searches, it also fails to include any allegations identifying which Category under Boeing Co. the policies, rules and handbook provisions would fall. Each category would require proof of different elements. As such, the Region and/or General Counsel should be required to file a Bill of Particulars putting Respondent on notice of the Region's and/or General Counsel's purported analysis of the policies, rules and handbook provisions that pertain to this claim so Respondent can be prepared to meet the allegations at the hearing.

The Consolidated Complaint lacks any specific content or context. Instead, the Consolidated Complaint contains only conclusory statements that the alleged interactions rose to the level of a "threat" without any facts to form a basis that any statement or conduct was unlawful or otherwise a violation. A valid claim requires at least some specificity as to what was said by whom and to whom and the context in which the statements were made. To be otherwise fails to provide Respondent the required notice in order to allow it to investigate the claim and prepare its defense.

5. Consolidated Complaint concerning discipline imposed against certain employees fails to allege facts sufficient to state any actionable claim.

Paragraphs 6(a), 6(c) and 6(d) contain conclusory statements regarding discipline imposed against certain employees. Said paragraphs fail to identify the individual or individuals involved in imposing such discipline. Said paragraphs fail to identify the nature of the employees as to whether they fall within a category of the bargaining unit.

Paragraph 6(e) is a conclusory statement unsupported by specific facts. Paragraph 6(e) fails to identify the individuals who allegedly committed the conduct described within the entirety of Paragraph 6. Paragraph 6(e) fails to provide specificity as to how the named employees were engaged in any formation, joining or assisting the union. Paragraph 6(e) fails to provide specificity as to what concerted activity the named employees were involved in. Paragraph 6(e) fails to provide specificity as to how the alleged conduct of unnamed managers of Respondent discouraged employees from engaging in any union activities.

Merely disciplining an employee for violation(s) of company policies does not rise to the level of a violation. Paragraph 6 of the consolidated complaint fails to contain any specificity concerning the alleged conduct that would sustain a claim that it was unlawful or otherwise a violation. Complaints which allege an employee's discipline or discharge was based solely upon the employee's involvement with the Union will be reviewed under the framework of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). Under *Wright Line*, the General Counsel has the initial burden of establishing that the employee's union activity was the motivating factor in the discipline or discharge. The Consolidated Complaint fails to provide any specificity or facts that meet the General Counsel's initial burden concerning such claims. The General Counsel's burden requires establishing: the employee is engaging in union activity; the employer's knowledge of that activity; and, the employer's anti-union animus. Further, any evidence propounded must establish a causal connection between the employee's protected activity and the discipline or discharge. The consolidated complaint does not contain any factual allegations to support the claim. The consolidated complaint does not contain any factual allegations that the named individuals were engaging in union activity. The consolidated complaint does not contain any factual allegations that Respondent knew of such activity. The consolidated complaint does not contain any factual allegations that indicate Respondent has an anti-union animus. The consolidated complaint does not contain any facts to support a

determination of a causal connection between the named individuals' engaging in union activity and their discipline.

The Consolidated Complaint fails to provide any facts or specificity to place the alleged conduct and imposition of discipline at issue or allege such conduct was unlawful or otherwise in violation. Paragraph 6 fails to provide Respondent the required notice in order to allow it to investigate the claims and prepare its defense.

6. Consolidated Complaint concerning searching an employee's toolbox fails to allege facts sufficient to state any actionable claim.

Paragraph 6(b) is merely a conclusory statement. Said paragraph fails to identify any individual or individuals who engaged in the conduct described therein. Without such specificity, Respondent is left to guess and is unable to perform an investigation into the alleged conduct and any witnesses that may have information concerning such alleged conduct in order to prepare its defense. Paragraph 6(e) incorporates Paragraph 6(b) into its conclusory statement. The issues identified above with regard to Paragraph 6 (b) also apply here. Paragraph 6(e) fails to provide the specificity required to support an allegation that the conduct was unlawful or otherwise in violation.

Additionally, Paragraph 6(e) fails to allege that the unidentified statements had any coercive effect. The Consolidated Complaint fails to address Respondent's policies concerning searches. In order to put the conduct at issue and pursue its claim, the General Counsel necessarily needs to address how the alleged conduct is unlawful in the face of Respondent's policies, rules and handbook provisions. Both common law and Board precedent provide that employer's searches of company provided areas and employee's property while on company grounds are not per se unlawful. In its recent decision in Verizon Wireless, the Board held that employers have the right to conduct searches, including searches of employees' property while on company premises. Verizon Wireless, 369 NLRB No. 108 (2020). In Verizon Wireless, the Board cited its decision in Boeing Co. with regard to the proper analysis of company policies to determine if any conduct pertaining to those policies was unlawful or otherwise a violation. Boeing Co., 365 NLRB No. 154 (2017). In Boeing Co., the Board held that it would no longer find unlawful the mere maintenance of policies, work rules or handbook provisions that were facially neutral where the legality turns on whether an employee would reasonably construe a

policy, rule or handbook provision to prohibit some type of potential Section 7 activity that might or might not occur. The Board established a new standard that analyzes the nature and extent of the potential impact on Section 7 rights and the legitimate justifications associated with the policy, rule or handbook provision. The evaluation must be consistent with the Board's duty to strike the proper balance. The Board defined three categories of policies, rules and handbook provisions. Category 1 includes policies, rules or handbook provisions that are designated as lawful to maintain because, when reasonably interpreted, they do not prohibit or interfere with the exercise of Section 7 rights or the potential adverse impact is outweighed by justifications. Category 2 includes policies, rules or handbook provisions that warrant individualized scrutiny on their potential interference and adverse impact. Category 3 includes policies, rules or handbook provisions that will be designated as unlawful to maintain because they would prohibit or limit protected conduct and the adverse impact on Section 7 rights is not outweighed by justifications associated with the policies, rules or handbook provisions. As the Consolidated Complaint fails to address the Respondent's policies, rules and handbook provisions concerning searches, it also fails to include any allegations identifying which Category under Boeing Co. the policies, rules and handbook provisions would fall. Each category would require proof of different elements. As such, the Region and/or General Counsel should be required to file a Bill of Particulars putting Respondent on notice of the Region's and/or General Counsel's purported analysis of the policies, rules and handbook provisions that apply to this claim so Respondent can be prepared to meet the allegations at the hearing.

7. Consolidated Complaint concerning denying an employee union representation fails to allege facts sufficient to state any actionable claim.

Paragraph 8 contains multiple sub-paragraphs that pertain to circumstances involving George Halls. The sub-paragraphs fail to contain any specificity which would allege that the conduct rose to the level of being unlawful or to be otherwise in violation. Paragraph 8(a) merely alludes to an "interview". Paragraph 8(a) fails to specify the nature of the meeting between the individuals that would allege it falls into any particular category of a meeting between management and an employee. Paragraph 8(a) fails to specify any statements made by Chad Steinbaugh, Lynn Mollica, or George Halls. Failure to provide such specificity precludes any actionable claim that George Halls made a request for union representation and was denied.

Paragraph 8(c) fails to specify the nature of the interview. Failure to provide such specificity cannot support an actionable claim that George Halls had reasonable cause to believe the interview would result in discipline. Paragraph 8(d) merely seems to re-state the conclusory statement from previous sub-paragraphs. The issues with the earlier sub-paragraphs also apply to this sub-paragraph. Paragraph 8(d) fails to identify any particular individual who allegedly denied George Halls' request for union representation. Paragraph 8(d) fails to specify any actual statements made by any of the individuals named in the sub-paragraphs. Without providing such specificity, Respondent cannot investigate the circumstances of the alleged conduct of the individuals in order to present a defense.

As in Montgomery Ward, a merely conclusory statement is not sufficient to place into issue whether any particular statements (such as verbal abuse in Montgomery Ward) brought conduct to the level of being unlawful or otherwise in violation. And as in United Biscuit, a complaint which does not contain the substance of statements made by individuals is not sufficient to advance a claim.

The circumstances under which Weingarten may apply involves the following: an interview of an employee by the employer; the employee must reasonably believe the interview will involve the imposition of discipline; the employee requests the presence of a union representative; the employer denies the request; and, the employer compels the employee to participate in the interview. The consolidated complaint fails to sufficiently plead factual allegations to support its claim that the alleged conduct was unlawful or otherwise in violation. The consolidated complaint fails to allege any facts to support the conclusory statement that the employee had a reasonable belief that discipline would be imposed as a result of the interview. The consolidated complaint fails to allege any facts that the employee requested a union representative. The consolidated complaint fails to allege any facts that the employer compelled or otherwise coerced the employee to participate in the interview. Inherent in the right to request a union representative is the right of the employee to refuse to participate in such an interview.

Paragraph 8 fails to provide the required notice to Respondent in order for it to investigate the claim and prepare its defense.

8. Consolidated Complaint concerning interfering, restraining and coercing employees in the exercise of their rights fails to allege facts sufficient to state any actionable claim.

Paragraph 9 of the consolidated complaint contains only a conclusory statement. Paragraph 9 makes reference to Paragraphs 5 and 8. The issues described earlier with respect to those paragraphs would apply here and cause Paragraph 9 to be insufficient to support any claim or place any claim at issue. While the paragraph makes reference to paragraphs 5 and 8, such paragraph 9 fails to contain any specificity with regard to how any of the conduct in the paragraphs referred to rise to the level of conduct described in paragraph 9. Paragraph 9 fails to specify how any particular conduct interfered with employees exercising their rights. Paragraph 9 fails to specify how any particular conduct restrained employees from exercising their rights. Paragraph 9 fails to specify how any particular conduct had a coercive effect on employees exercising their rights. Without such specificity, paragraph 9 is insufficient to support a claim.

Paragraph 9 fails to provide the required notice to Respondent in order for it to investigate the claim and prepare its defense.

9. Consolidated Complaint concerning discrimination concerning the hire, tenure or conditions of employment of employees fails to allege facts sufficient to state any actionable claim.

Paragraph 10 of the consolidated complaint contains only a conclusory statement. Paragraph 10 makes reference to Paragraph 6. The issues described earlier with respect to Paragraph 6 would apply here and cause Paragraph 10 to be insufficient to support any claim or place any claim at issu. While the paragraph makes reference to paragraph 6, such paragraph 10 fails to contain any specificity with regard to how any of the conduct in the paragraphs referred to rise to the level of conduct described in paragraph 10. Paragraph 10 fails to specify how any particular conduct discriminated with regard to the hire or tenure of employees. Paragraph 10 fails to specify how any particular conduct discriminated with regard to terms or conditions of employment. Paragraph 10 fails to specify how any particular conduct discouraged membership in a labor organization. Without such specificity, paragraph 10 is insufficient to support a claim.

Paragraph 10 fails to provide the required notice to Respondent in order for it to investigate the claim and prepare its defense.

III. Conclusion

As currently drafted, the allegations of the Consolidated Complaint lack the requisite specificity and deny Respondent due process to defend itself against the allegations. The "who, what, where" elements are absent from the allegations. The lack of specificity further prejudices the Respondent by giving the General Counsel and the Union leeway to change its legal theories as the case develops and allows witnesses to change their testimony during the hearing where it would still fall within the ambiguous allegations of the complaint. Through its Motion for Bill of Particulars, Respondent merely seeks the specificity it is entitled to under the law to defend itself against unfair labor practice allegations. Absent being provided with the particulars, Respondent is forced to try and defend itself against an ever-shifting landscape and without learning of the factual basis of the allegations of conduct which supposedly rises to the level of a violation which is a clear denial of due process. If a Bill of Particulars is not required and issued, the Respondent will be irreparably prejudiced, denied procedural due process, and may, by necessity, be compelled to request a continuance of the hearing after it hears the General Counsel's/Union's evidence for the first time.

For all of the reasons set forth above, Respondent respectfully requests that this Motion be granted and the Regional Director and/or General Counsel be ordered to file a Bill of Particulars in this matter.

Respectfully Submitted
Full Fill Industries LLC, Employer
Respondent

By: 
David B. Wesner, Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14 day of December, 2020, he served a copy of the Employer's Motion for Bill of Particulars via e-mail on:

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